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July 25, 2013

Honorable Joan Azrack  
United States Magistrate Judge, USDC  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201  
via ECF

Re: Tito v. Rubin & Rothman, LLC et al.  
12-CV-3464

Dear Magistrate Judge Azrack:

I submit the herein letter in response to the letter dated July 24, 2013 from attorney Daniel Schlanger to Your Honor (Dkt. No. 40) which was submitted in opposition to the Defendants' motion for permission to file a sur-reply in regard to Plaintiff's motion for fees and costs. Therein Mr. Schlanger cites to several non-binding decisions which criticize sur-replies. Mr. Schlanger otherwise argues that the Defendants' motion should be denied as it was filed "...without providing any specifics, examples or supporting authority...." However, had I set forth any "specifics, examples or supporting authority" in my letter motion, Your Honor may rest assured that Mr. Schlanger would have vigorously claimed that I was filing a sur-reply without permission. Indeed, Your Honor requires that a party first obtain permission from the Court before filing sur-reply papers. *Marcelin v. Cortes*, 2010 U.S. Dist. LEXIS 140746 (E.D.N.Y.).

By referring to non-Second Circuit area cases which criticize sur-replies Mr. Schlanger ignored those numerous cases from the Eastern District of New York wherein Your Honor allowed parties to file sur-reply papers. *Zheng Fang v. Yongjing Zuang*, 2010 U.S. Dist. LEXIS 133618 (E.D.N.Y.); *Eurospark Indus. v. Underwriters at Lloyds*, 567 F. Supp. 2d 345, 366 (E.D.N.Y. 2008); *In re United States*, 515 F. Supp. 2d 325, 327 (E.D.N.Y. 2007); *United States v. Lavi*, 97 A.F.T.R. 2d (RIA) 2027 (E.D.N.Y. 2005); *Sparman v. Edwards*, 26 F. Supp. 2d 450, 461 (E.D.N.Y. 1996); *Bennett v. A.P.A. Trucking Leasing Corp.*, 1991 U.S. Dist. LEXIS 15999 (E.D.N.Y.). Apparently, Mr. Schlanger is not impressed with Your Honor's past rulings. Also, it seems Mr. Schlanger is also not impressed with his duty to cite to cases adverse to his client's position in papers filed with a court.

Further evidence that Mr. Schlanger is not impressed with Your Honor is found in the fact that he failed to comply with Your Honor's bundling rule in regard to Plaintiff's motion for attorneys fees and costs.

Finally, in footnote 1 of his letter to Your Honor Mr. Schlanger references to the time which the Plaintiff filed her reply papers and the time which I filed my letter motion seeking permission to file a sur-reply. I fail to see the relevancy of this reference. In fact, this is not the first time that Mr. Schlanger has referenced to the timing of my filings in a pending litigation. This tactic is further evidence of a certain paranoia which Mr. Schlanger has exhibited at other times during the litigation of the above-entitled action.

For the additional reasons set forth above the Defendants should be granted permission to file a sur-reply in regard to Plaintiff's motion for attorneys fees and costs.

Thank you for your attention herein.

Respectfully submitted,

/ s / *Robert L. Arleo*

Robert L. Arleo

RLA:gra

cc: All counsel of record via ECF

